

CASE DIGEST

Spring 2002

A VREB SPEAKING Supplement

Let it be stated that names and dates used in the CASE DIGEST are fictitious and any relation to actual people, places, companies, etc. is specifically coincidental and unintentional.

Case One:

On January 15, 2000, a licensed real estate broker discussed a listing with the property owner. This owner did not have a signed agreement with the broker to list his property. The broker subsequently placed the subject property in the multiple listing service, without a signed agreement from the owner.

The broker was in violation of the **Board's January 1999 Regulation VAC 135-20-290.2. Improper dealing.** 2. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative.

The Board imposed a monetary penalty on the broker and revoked the broker's license.

Case Two:

In 1999, a licensed real estate associate broker pled guilty in court, to bank fraud, a felony. The licensee notified the Board, but not until two months after the conviction.

The felony conviction was in violation of the **Board's January 1999 Regulation 18 VAC 135-20-260. Unworthiness and incompetence.** 5. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of a

misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony.

The associate broker's failure to promptly notify the Board of pleading guilty to a felony, is a violation of the **Board's January 1999 Regulation 18 VAC 135-20-260. Unworthiness and incompetence.** 6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury.

The associate broker consented to the immediate revocation of his real estate broker's license and agreed to the simultaneous issuance of a salesperson's license. He further agreed to the suspension of the salesperson's license for a year.

Case Three:

A seller entered into a Contract of Purchase with Purchaser A of a residential property. Purchaser A made an earnest money deposit of \$1000 with Real Estate Company 1.

Several months later Purchaser A signed a Contract Release. The seller never signed the Contract Release.

The seller subsequently signed a Contract of Purchase, with Purchaser B, for the same subject property. This contract was written by a licensed real estate salesperson with Real Estate Company 1. The terms of this sales contract did not include a term or condition that

a release had not been executed by all parties to the previous Contract of Purchase.

The salesperson's failure to include complete terms and conditions in the purchase contract with Purchaser B, that a contract release had not been signed by all parties to the previous purchase contract was in violation of the **Board's January 1999 Regulation 18 VAC 135-20-300. Misrepresentation/omission.** 6. Failing to include the complete terms and conditions of the real estate transaction in any lease or offer to purchase.

The salesperson's failure to include the complete terms in the purchase contract constitutes failing to act in such a manner as to safeguard the interests of the public, which is a violation of the **Board's January 1999 Regulation 18 VAC 135-20-260. Unworthiness and incompetence.** 8. Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public.

The Board imposed a monetary penalty on the salesperson.

Case Four:

A tenant entered into a Lease Agreement with an agent to lease property. The tenant tendered a security deposit. Subsequently, an investigator for the Board sent the agent correspondence requesting a written response and documentation regarding a complaint by the aforementioned tenant. Although the agent received the letter, he did not respond to the complaint allegations.

The agent's failure to respond to an inquiry by the board within twenty-one days, is a violation of the **Board's January 1999 Regulation 18 VAC 135-20-250. Response to inquiry of the board.** A licensee must respond to an inquiry by the board or its agents within 21 days.

The agent's failure, upon demand, to produce to the board any document, book, or record concerning any real estate transaction in which he was involved, is a violation of the **Board's January 1999 Regulation 18 VAC 135-20-240. Provision of records to the board.** A licensee of the Real Estate board shall upon demand produce to the board or any of its agents any document, book, or record concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or its agents.

The Board imposed a monetary penalty.

Case Five:

A purchaser signed a Residential Contract to Purchase a residential property. The listing agent stated that the builder informed her the property was intended as a two bedroom with a study area/den. The agent marketed the property as having three bedrooms. This agent's actions in listing the house as a three bedroom home, when she had actual knowledge of two bedrooms, constitutes a failure to disclose to prospective buyers all material facts pertaining to the physical condition of the property, which is a violation of **§ 54.1-2131(B) of the Code of Virginia, as amended. Licensees engaged by sellers.** B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee.

The real estate agent paid a monetary penalty.

Case Six:

On two separate occasions, a principal broker of a property management company hired a plumber to perform plumbing repairs. The subject property was managed by this company, but was owned by a private individual.

The plumber was not a licensed tradesman. The hiring of an unlicensed tradesman amounts to failure to promote the interests of the landlord, which is a violation of § 54.1-2133(A)(4) of the *Code of Virginia*, as amended. **Licensees engaged by landlords to lease property.** A licensee engaged by the landlord shall exercise ordinary care.

The principal broker consented to a monetary penalty.

Case Seven:

In June, a purchaser entered into a Residential Contract of Purchase through a buyer's agent to purchase a residential property. In July, the purchaser signed an addendum to the contract requesting that the seller make repairs to the subject property. The listing agent subsequently provided a copy of the addendum, ratified by the seller, to the buyer's agent. The buyer's agent never delivered a copy of the ratified addendum to the buyers.

This failure of the buyer's agent to make prompt delivery to each principal to a transaction complete and legible copies of any addenda and ratified agreements is a violation of the **Board's January 1999 Regulation 18 VAC 135-20-310. Delivery of instruments.**

The buyer's agent consented to a monetary penalty.

Case Eight:

On May 1, a seller entered into a Sales Contract with a purchaser for the purchase and sale of a residential property. On May 4, the contract owner (purchaser), entered into a Residential Deed of Lease with a tenant, for the lease of the subject property. The purchaser was a real estate agent. A realtor was the listing and selling firm.

In June, the purchaser authorized carpet installation at the subject property as a condition of the subject lease. In July, the seller stated to the Board's agent that he never authorized the purchaser to install carpet in the subject property.

In September, the purchaser tendered a check to the seller that represented the tenant's security deposit and first month's rent, less the cost of the carpet.

Late in September, the seller stated to the Board's agent that he never authorized the purchaser to negotiate a lease or to move a tenant into the property. In October, a friend of the seller, who was acting as the seller's attorney, and who was involved in contract negotiations between the seller and the purchaser, stated to the Board's agent that he did not authorize the purchaser to move a tenant into the property.

The purchaser's actions in installing carpet without authorization from the seller and deducting the cost from the rent is in violation of the **Board's June 1995 Regulation 6.10.2. Improper dealing.** Actions constituting improper dealing include offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent.

This was also a violation of the **Board's 1995 Regulation 6.7.8. Unworthiness and incompetence.** Actions constituting unworthy

and incompetent conduct include failing to act as a real estate broker or salesperson in such a manner as to safeguard the interest of the public, or otherwise engaging in improper, fraudulent, or dishonest conduct.

The purchaser agreed to pay a monetary penalty.

Case Nine:

During the mid 1990's, a licensed real estate broker began providing property management services to clients in her capacity as a broker for Real Estate Company A. The services to the property management clients included holding rental security deposits and maintenance deposits in escrow. The bookkeeper working for the broker placed the clients' deposits in the account for Real Estate Company B which account was not labeled as an escrow account. The broker subsequently discontinued the practice of holding such deposits in the account of Real Estate Company B which account was not identified as an escrow account. The broker now handles all the property management accounts through Real Estate Company A, maintaining one escrow account for security deposits and a separate escrow account for maintenance deposits.

The broker's action of transferring the deposits to an account of a separate brokerage company which account was not identified as an escrow account is a violation of the **Board's January 1999 Regulation 18 VAC 135-20-320. Record keeping and escrow funds.** 6. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by these regulations (see 18 VAC 135-20-180 A 1 of this chapter). The Board imposed a monetary penalty.

Case Ten:

A real estate salesperson entered into a contract to purchase a house for himself. At the time the salesperson entered in the contract, the Board's records revealed the salesperson held an inactive real estate license. The salesperson did not disclose in the contract that he held an inactive real estate license. The salesperson told the Board's investigator that he either forgot to disclose or was not aware that he needed to disclose in writing that he was an agent. The salesperson also told the Board's investigator that the seller and both real estate agents involved in the transaction were aware that he used to sell real estate.

The salesperson's failure to disclose that he holds an inactive real estate salesperson's license to the owner in writing in the offer to purchase is a violation of the **Board's January 1999 Regulation 18 VAC 135-20-210. Disclosure of interest.** A. If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire real property through purchase or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner in writing in the offer to purchase or lease.

The salesperson consented to a monetary penalty.
